

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE ACTING ATTORNEY-GENERAL,

IN RESPONSE TO

*Senate resolution of April 18, 1892, in relation to the effort to drain
Goose Lake, in the States of Oregon and California.*

MAY 2, 1892.—Referred to the Committee on Commerce and ordered to be printed.

DEPARTMENT OF JUSTICE,
Washington, D. C., April 28, 1892.

SIR: In reply to the resolution of the Senate of the 18th instant, directing the Attorney-General "to transmit to the Senate copies of any papers on file in the Department of Justice relating to the subject of the draining, or an attempt to drain, Goose Lake, lying in the States of Oregon and California, by tapping the waters thereof, by ditching, or by any other means," I have the honor to transmit the accompanying copy of all the correspondence found upon the files of the Department in relation to the matter named.

Very respectfully,

CHARLES H. ALDRICH,
Acting Attorney-General.

The PRESIDENT OF THE SENATE.

PORTLAND, OREGON, *October 22, 1891.*

SIR: I have yours of the 16th instant (H. R. H. 4399-88) relative to drainage of Goose Lake, and requesting me to send all papers sent and copies of letters written by you to the attorney of the northern district of California, if I am convinced that the jurisdiction lies there. I think that there can be no doubt but that the case should be presented there, and I have this day forwarded all papers and copies of letters to United States Attorney Garter.

Very respectfully,

FRANKLIN P. MAYS,
United States Attorney.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 16, 1891.

SIR: In reply to your letter of the 6th instant relative to the drainage of Goose Lake, I beg to say if you are convinced that the jurisdiction lies in the northern district of California you are directed to transmit the papers to United States Attorney Garter, of that district, together with copies of all letters which I have written you in the matter.

Respectfully,

W. H. H. MILLER,
Attorney-General.

MR. FRANKLIN P. MAYS,
United States Attorney, Portland, Oregon.

PORTLAND, OREGON, October 6, 1891.

SIR: Referring again to yours of August 10, 1891 (H. R. H. 4399—88), concerning the drainage of Goose Lake, I have to inform you that I have had the matter under consideration and had some correspondence with one of the petitioners, H. C. Fleming, from which, and the papers sent me, it appears that the proposed ditching, as well as the residence of Mr. E. Lauer, is within the limits of the State of California. I am therefore of the opinion that the proposed proceedings should be instituted in California and not in Oregon. I do not see how service could be obtained upon Mr. Lauer in Oregon, and if it could it still seems to me very doubtful whether the Oregon court would have jurisdiction of the objectionable acts of Mr. Lauer committed upon land in California. I shall, however, retain the papers sent me until I hear from you upon the matters above suggested.

Very respectfully,

FRANKLIN P. MAYS,
United States Attorney.

THE ATTORNEY-GENERAL.

PORTLAND, OREGON, August 22, 1891.

SIR: I am just in receipt of yours of the 10th instant (H. R. H. 4399—88), relative to the drainage of Goose Lake. The matter shall have my early attention.

Very respectfully,

FRANKLIN P. MAYS,
United States Attorney.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 10, 1891.

SIR: I transmit herewith papers from the Interior Department relative to the drainage of Goose Lake. The matter was considered some years ago by your predecessor, Mr. McArthur, and the proposal to restrain the drainage or tapping of the lake was only dropped because the promoters of the enterprise abandoned their project. They are now threatening, I believe, to tap the lake for the purpose of a canal, or irrigation, or some other object. The matter was called to my attention by Mr. H. C. Fleming, of New Pine Creek, of Oregon, who presents a petition on behalf of the citizens.

I transmitted the case to the Secretary of the Interior, who detailed a special agent to investigate the question. The result of his investigation shows, it seems to me, the necessity of restraining any attempt to tap the lake. Since this lake is a highway of interstate commerce, I am of the opinion that there can be no question as to the right of the United States to maintain a bill to restrain any injury to it. The United States would also have a further right to restrain any injury being done by reason of its being an owner of riparian lands. Please prepare and file a bill unless you see some reason to the contrary which does not appear in these papers.

Respectfully,

Acting Attorney-General.

MR. FRANKLIN P. MAYS,
United States Attorney, Portland, Oregon.

WASHINGTON, *July 27, 1891.*

SIR: Referring to your letter of March 24, 1891, inclosing copy of a letter from H. C. Fleming and a petition relating to the proposed drainage of Goose Lake, lying in the States of California and Oregon, I have to state that upon the receipt of your letter all the papers were sent to the Commissioner of the General Land Office, and, in accordance with your suggestion, he was directed to detail a special agent for an examination of the case.

I have the honor to inclose the report of the special agent, together with the report of the Commissioner of the General Land Office and his recommendation that the United States attorney take immediate steps to prevent the drainage of said lake. These reports contain full statements of the facts, and are accompanied with the interviews and opinions of reliable citizens of the immediate neighborhood of said lake, tending to show that the draining of the lake would injuriously affect the country thereabout, and that the tapping of the lake as proposed by Mr. Lauer would result ultimately in the drainage thereof. Said lake is shown to be navigable, and is or may be a commercial highway between the States of California and Oregon.

In view of the showing made in the reports, and since you state that you do not think there would be any question of the right of the United States to file a bill, either as owner of the lands on the shores or under its constitutional power in the regulation of interstate commerce, I therefore request that you institute an action in the proper tribunal to prevent the proposed tapping of said lake.

Herewith are returned all the papers pertaining to the matter.

Very respectfully,

GEO. CHANDLER,
Acting Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, D. C., March 24, 1891.

SIR: I have the honor to call to your attention the within copy of a letter from Mr. H. C. Fleming and a petition relating to a proposed drainage of Goose Lake, lying in the States of California and Oregon. This question was before your Department some years ago, and on June 16, October 13, and November 9, 1888, you addressed this Department on the subject. The view then entertained was that the drainage would be injurious to the Government lands on the margin of said lake. If your Department still entertains this view I presume you will wish me to bring a bill to restrain the cutting of the canal and drainage of the lake. Inasmuch as the lake lies in both States and a line of small steamers ply from one State to the other, the United States has a further interest in addition to its riparian rights.

I do not think there would be any question of the right of the United States to bring a bill either as owner of lands on the shores, or under its constitutional power in the regulation of interstate commerce. On the facts presented it would seem to me that it would perhaps be such an injury to the public as we should not countenance, but I have no means at hand of verifying those facts. Let me suggest that it might be well to detail a special agent for the examination of the case upon the grounds and report, in order that we might take more intelligent action. I shall be grateful for whatever advice you may be willing to give me.

Please return the petition. I also inclose a copy of a report on the matter of Mr. L. L. McArthur who was, at the date of making it, United States attorney for the district of Oregon.

Respectfully,

The SECRETARY OF THE INTERIOR.

Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 10, 1891.

SIR: The petition requesting that the drainage of Goose Lake be restrained, which you forwarded to me in your letter of March 3 last, was by me transmitted to the Secretary of the Interior, with a request for investigation. The investigation has been made and the Secretary has requested me to take steps to prevent any injury to the lake, and I have this day transmitted the papers to the United States attorney for the district of Oregon, with instructions to take action to prevent the tapping of the lake. I presume that you and other citizens interested will lend him all the aid you can in the collection of evidence.

Respectfully,

Acting Attorney-General.

Mr. H. C. FLEMING,
New Pine Creek, Oregon.

NEW PINE CREEK, OREGON,
March 3, 1891.

DEAR SIR: I herewith transmit to you a petition from the citizens of this immediate vicinity in regard to the proposed tapping of Goose Lake. The petition has not been very extensively circulated on account of the bad condition of the roads by reason of deep snow. I think I may safely say that the petition expresses the wish of at least nine-tenths of the citizens of this (Goose Lake) valley. Lest the petition should be too late in reaching you I have concluded to forward it immediately without waiting for further signers. There will perhaps be a copy of said petition forwarded to you from Davis Creek, Modoc County, Cal., signed by the citizens there. There are perhaps others interested in said canal with Mr. E. Lauer, but they are not known to the public.

It is thought that their object is not irrigation, but to *drain* the lake that they may uncover more land.

Very respectfully,

H. C. FLEMING.

Hon. W. H. H. MILLER,
Attorney-General, Washington, D. C.

DAVIS CREEK, CAL., February —, 1891.

Hon. W. H. H. MILLER,
United States Attorney-General, Washington, D. C.:

DEAR SIR: We, the undersigned, citizens of Modoc County, Cal., residing in the immediate vicinity bordering on Goose Lake, would respectfully submit the following facts in regard to the waters of said lake for your consideration and action:

Goose Lake is a most beautiful sheet of water covering an area of about 240 square miles.

It is also a navigable body of water, partly in the State of Oregon and partly in the State of California. Its pure waters abound in the finest fish. Its future usefulness for fisheries and navigation is great.

On its borders are the finest natural meadows on the Pacific slope. Our most beautiful climate is modified by the evaporation of its waters freeing it from the stinging frosts to which other valleys of no greater altitude where there are no lakes are subject.

We wish to inform your honor that one E. Lauer, of Alturas, Modoc County, Cal., is now constructing a canal of considerable size for the purpose of tapping the waters of Goose Lake.

That he has already plowed the ground for said canal through the main outlet of Goose Lake; that he must in order to tap said lake cut his canal 8 or 10 feet below the bed of the natural outlet of said lake to reach the point to which the water has now receded.

This canal, if allowed to be constructed, will in the end drain the last drop of water from said lake and thereby destroy its usefulness, as set forth above, besides ruining thousands of acres of our natural meadows, to the great injury of at least three-fourths of the citizens of this valley.

Mr. E. Lauer, we think, claims the lake as a great reservoir under the late irrigation act of Congress, and had his canal surveyed by an engineer in the employ of the Government.

Now we would most respectfully call your attention to the second section of the act of Congress admitting Oregon as a State; and in view of these rights guaranteed to every citizen of the United States we present the above facts to your honor, asking that speedy measures be taken to prevent such disastrous results as we believe would inevitably follow the tapping of said lake.

Appealing to your honor for speedy action in behalf of justice under the laws of our country, we most respectfully submit the foregoing.

C. I. SULLIVAN.
J. E. LEONARD.
J. C. TURNIDGE.
J. D. MULKEY.
E. R. SULLIVAN.
S. MULKEY.
A. H. LEONARD.
J. P. FREEMAN.
I. N. DAYSON.
Y. L. SMITH.
JAS. LAMB.

D. E. MULKEY.
GEORGE S. RAMER.
LAFAYETTE ERWIN.
JAMES WATKINS.
LEWIS HENDERSON.
R. E. HENDERSON.
A. EAVES, S. D.
T. C. NELSON.
JOHNSON MULKEY.
L. N. CLARK, farmer.
WILLIAM GROVER, farmer.

Mrs. JANE GROVER, farmer.
E. D. HALL.
JOHN BRILES.
HUGH FENDER.
S. A. SHEDD.
C. D. EBERHARD.
Z. T. AUSTIN.
WM. H. BLURTON.
J. C. LARGENT, farmer.
A. J. COFFEE.
DAVID WORTHINGTON.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 10, 1888.

SIR: I transmit herewith a copy of a letter of the 9th instant, with its enclosure, from the Secretary of the Interior, for your consideration in connection with the legal proceedings heretofore directed in the matter of the proposed drainage of Goose Lake by a company incorporated under the laws of California.

Respectfully,

A. H. GARLAND,
Attorney-General.

JOHN T. CAREY, Esq.,
United States Attorney, San Francisco, Cal.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 10, 1888.

SIR: I transmit herewith a copy of a letter of the 9th instant, with its inclosure, from the Secretary of the Interior, for your consideration in connection with the legal proceedings heretofore directed in the matter of the proposed drainage of Goose Lake by a company incorporated under the laws of California.

Respectfully,

A. H. GARLAND,
Attorney-General.

L. L. MCARTHUR, Esq.,
United States Attorney, Portland, Oregon.

DEPARTMENT OF THE INTERIOR,
Washington, November 9, 1888.

SIR: By Departmental letter of October 13, 1888, there were transmitted to your Department certain papers in the matter of the proposed drainage of Goose Lake, Oregon. One of the papers, to wit, the recommendation of the local officers at the Lakeview land office, dated September 21, 1888, having been mislaid and not to be found at the time of writing said Departmental letter, I have the honor to transmit the same herewith.

Very respectfully,

D. L. HAWKINS,
Acting Secretary.

The ATTORNEY-GENERAL.

PORTLAND, OREGON, November 8, 1888.

SIR: Referring to your letter N. T. N. R. 4399-1888 November 1, 1888, I beg leave to attract your attention to the inclosed copy of letter from State Senator Cogswell.

Very respectfully,

LEWIS MCARTHUR,
United States Attorney.

The ATTORNEY-GENERAL.

LAKEVIEW, OREGON, October 23, 1888.

DEAR SIR: Referring to your favor of 23d instant, relating to the draining of Goose Lake, I have to say that I am informed that the parties have quit work and I understand that they have abandoned the project since they learned that the Government contemplated taking action. I will, however, get all the particulars and keep you advised. I will be in Portland about Christmas and will fully advise you personally in regard to the conditions of things here.

I am, sincerely,

C. A. COGSWELL.

Hon. L. MCARTHUR,
United States District Attorney, Portland, Oregon.

P. S.—On behalf of the citizens of this county I thank you for your prompt action in this matter.

C. A. COGSWELL.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 16, 1888.

SIR: Referring to your letter of the 8th instant, you are informed that the Department is in receipt of a recent communication from the United States Attorney for Oregon, stating that the scheme of draining Goose Lake has apparently been abandoned for the present by the parties organized for that purpose.

Respectfully,

A. H. GARLAND,
Attorney-General.

JOHN T. CAREY, Esq.,
United States Attorney, San Francisco, Cal.

SAN FRANCISCO, November 8, 1888.

SIR: I have the honor to acknowledge the receipt of your letter of the 1st instant, initials N. T. N. R., File No. 4399, 1888, together with inclosures relative to applying for injunction against a California corporation to prevent it from draining Goose Lake. The inclosures did not include the report of the Commissioner of the General Land Office, referred to in the letter of Secretary Vilas to yourself, under date of the 16th June last, initials Z. M., 5247, 1888, copy of which letter was inclosed to me. I have no information other than that contained in your letter and its inclosures. I shall write Mr. C. A. Cogswell and United States Attorney Lewis L. McArthur and gather the necessary data from which I can formulate a bill. I would suggest that I should be furnished with a description of the lands owned by the Government adjoining the lake. The Interior Department can furnish a list of the lands, certifying the fact that they are vacant and unsold. I shall take all needful steps to get the necessary data and to be informed should any steps be taken to drain the lake that I may follow instructions.

Very respectfully,

JOHN T. CAREY,
United States Attorney.

The ATTORNEY-GENERAL,
Washington, D. C.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 1, 1888.

SIR: Referring to your letter of the 23d ultimo, you are informed that instructions have been given to the United States attorney for northern California, relative to enjoining the drainage of Goose Lake, similar to those contained in Department to you of October 17.

Respectfully,

A. H. GARLAND,
Attorney-General.

L. L. MCARTHUR, Esq.,
United States Attorney, Portland, Oregon.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 1, 1888.

SIR: I transmit herewith copies of letters of June 16 and October 13, from the Secretary of the Interior, relative to the proposed drainage of Goose Lake by a corporation under the laws of California.

It appears from the facts as stated that the Government has such proprietary interest in value in the lands adjacent to said lake, in the States of California and Oregon, as will justify a proceeding against the corporation by injunction.

You are instructed to apply for an injunction to restrain said corporation, should it attempt or have attempted to drain said lake.

For your information I inclose a copy of a report of July 18, from the United States attorney for Oregon, relative to the subject.

Respectfully,

A. H. GARLAND,
Attorney-General.

J. T. CAREY, Esq.,
United States Attorney, San Francisco, Cal.

DEPARTMENT OF JUSTICE,
Washington, D. C., November 1, 1888.

SIR: I have the honor to transmit herewith a copy of a letter of the 23d ultimo from the United States attorney for Oregon, relative to an injunction against the officers of the California corporation organized to drain Goose Lake.

Instructions have been given to the United States attorney for northern California similar to those given to the United States attorney for Oregon.

Very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

PORTLAND, OREGON, *October 23, 1888.*

SIR: I am just in receipt of your letter (N. T. N. R. 4399—1888), by which I am instructed to apply for an injunction to restrain the officers and servants of the California corporation should they attempt to drain Goose Lake.

I shall prepare a bill of complaint ready for service upon any of the officers or servants of the said company who may be carrying on any work of the kind in Oregon and have them duly enjoined.

I would respectfully suggest that the United States attorney for the northern district of California be advised of the intended drainage of said lake by said corporation and be instructed to bring suit and obtain an injunction in that jurisdiction.

Very respectfully,

LEWIS L. MCARTHUR.
United States Attorney.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 17, 1888.

SIR: I transmit herewith a copy of a letter of the 13th instant, with its inclosures, from the Secretary of the Interior, relative to the proposed drainage of Goose Lake, by a corporation organized under the laws of California, which has been the subject of previous correspondence.

It would appear from the facts in possession of the General Land Office that the Government has such proprietary interest in value in the lands adjacent to said lake, in the States of Oregon and California, as will justify a proceeding against the corporation by injunction.

You are instructed therefore to apply for an injunction to restrain said corporation, should an attempt be made by it, or have been already made, to drain said lake.

Respectfully,

A. H. GARLAND,
Attorney-General.

L. L. MCARTHUR, Esq.,
United States Attorney, Portland, Oregon.

DEPARTMENT OF JUSTICE,
Washington, D. C., October 17, 1888.

SIR: Referring to your letter of May 23, 1888, inclosing a communication from Hon. C. A. Cogswell, relative to the proposed drainage of Goose Lake by a corporation organized under the laws of California, I have the honor to inform you that, after conference with the Secretary of the Interior, it has been ascertained that the General Land Office is in possession of facts going to show that the Government has such proprietary interest in value in lands adjacent to said lake in the States of Oregon and California as will justify a proceeding against said corporation by injunction.

The United States attorney for Oregon has been instructed to apply for an injunction to restrain the said corporation should an attempt be made by it, or have been already made, to drain the said lake.

Very respectfully,

A. H. GARLAND,
Attorney-General.

Hon. J. H. MITCHELL,
United States Senate,

UNITED STATES LAND OFFICE,
Lakeview, Oregon, September 21, 1888.

SIR: We are in receipt of your letter E of September 4, 1888, relative to the proposed drainage of Goose Lake, and as to how the proposed drainage would affect the value of public land bordering on the lake.

And in answer thereto have to say that in our opinion the proposed drainage by lowering the waters of Goose Lake would not only injure and make less valuable all lands bordering on said lake, but would also injure and make less valuable all lands in the vicinity of Goose Lake.

Yours, respectfully,

A. F. SNELLING, *Register.*
H. M. TOWNSEND, *Receiver.*

The COMMISSIONER OF THE GENERAL LAND OFFICE,
Washington, D. C.

DEPARTMENT OF THE INTERIOR,
Washington, October 13, 1888.

SIR: I have the honor to acknowledge the receipt of your communication of August 3 last, submitting therewith a copy of a report from the United States attorney for Oregon, relative to the probable injury to the Government lands by the drainage of Goose Lake, by a corporation organized under the laws of California. You request that the Department of Justice may be advised whether, upon the facts in possession of the General Land Office, the Government has such proprietary interest in value in said lands as would justify a proceeding against the California corporation by injunction.

I transmit herewith a copy of a report from the Commissioner of the General Land Office, and also copy of a report from the local officers at Lakeview, Oregon, showing the interest of the Government in lands lying adjacent to said lake and the injury that would accrue to said lands by the drainage thereof.

I also call your attention to a report of the Commissioner of the General Land Office transmitted to the Department of Justice with my letter of June 15, 1888, upon a communication of C. A. Cogswell, with reference to said matter.

Very respectfully,

WM. F. VILAS,
Secretary.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 3, 1888.

SIR: I have the honor to transmit herewith a copy of a report of the 18th ultimo from the United States attorney for Oregon, relative to the probable injury to the Government lands by the drainage of Goose Lake by a corporation organized under the laws of California.

This matter was the subject of a letter to you from the Attorney-General dated May 26, 1888.

The United States attorney's report is submitted, with a request that the Department may be advised whether, upon the facts in the possession of the General Land Office, the Government has such proprietary interest in value in the matter as would justify a proceeding against the California corporation by injunction.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
Washington, D. C., August 3, 1888.

SIR: I have the honor to transmit herewith a copy of a report of the 18th ultimo from the United States attorney for Oregon, relative to the drainage of Goose Lake, which was the subject of your letter to the Attorney-General of May 23, 1888.

A similar copy has been sent to the Secretary of the Interior, with a request that the Department may be advised whether, upon the facts in the possession of the

General Land Office, the Government has such proprietary interest in value in the matter as would justify a proceeding against the corporation engaged in the work of draining said lake by injunction.

Your attention is respectfully invited to that portion of the United States attorney's report in which reference is made to the decision of the Supreme Court in *Willamette Iron Bridge Company vs. Hatch*, March 19, 1888, wherein the court maintains that "there must be a direct statute of the United States in order to bring within the scope of its laws as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the State."

You shall be advised of whatever further action is taken in the matter by the Department.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

Hon. J. H. MITCHELL,
United States Senate.

PORTLAND, OREGON, *July 18, 1888.*

SIR: Referring to your letter of June 27, 1888, N. T. N. R., 4399, 1888, I beg leave to submit the following:

Goose Lake is a large body of fresh water lying partly in Oregon and partly in California. It is 32 miles long, has an average width of 6½ miles, covers an area of 208 square miles, and is navigable. I am informed by the inspector of hulls for this district that two small steamboats ply the waters thereof, each having a landing place in California and in Oregon.

Four hundred and fifty-one acres of public land border upon that part of the lake lying in Oregon and 2,876 acres of public land upon that part thereof lying in California.

A private corporation has been organized under the laws of California for the purpose of draining the lake by means of a canal, which, I assume, is designed to convey the water toward Pitt River.

The important question is as to whether or not the United States can enjoin the officers and servants of the said private corporation from draining the lake.

Upon principle every owner of land bordering upon a fresh-water lake or river may lawfully and equally enjoy every right incident to proprietorship and location. I know of no rule of law or principle of equity nor do I know of any Federal or State statute abridging the riparian rights of the United States. In *Woodruff v. The North Bloomfield Gravel Mining Company* (18 Federal Reporter, p. 772) it was laid down as a settled principle that the United States, in all respects, stand upon the same footing as private owners of land except that the States can not subject the lands to taxation nor interfere with their primary disposal.

There is a distinction to be taken between those civil cases in which the Government seeks to protect its proprietary rights and those in which it seeks to assert or defend any of those numerous and important rights with which it is invested for the general welfare of the people and which touch subjects over which the General Government has general supervision by reason of its sovereignty. In the former class it has the same fundamental right to protection that an individual has. It may seek any relief which, under the general provisions of the statutes, may be invoked by a private individual. In the latter class it can have no resort to the courts unless Congress specifically declares that it may have.

The very case submitted illustrates the distinction. As riparian proprietor the United States may enjoin any person or persons from so diminishing the volume of water in the lake as to destroy or curtail their riparian rights, but as sovereign having jurisdiction over the navigable waters upon which interstate or foreign commerce may be carried on, they can not protect such navigable waters from diminution unless Congress has specified that they may do so and indicated the form in which suit shall be brought.

This latter proposition is deducible from the opinion of the Supreme Court in the *Willamette Iron Bridge Company vs. Hatch*, decided March 19, 1888. In that case it was said: "The power of Congress to pass laws for the regulation of the navigation of the public rivers and to prevent any and all obstructions therein is not questioned; but until it does pass some such law there is no common law of the United States which prohibits obstructions and nuisances in navigable rivers unless it be the maritime law administered by the courts of admiralty and maritime jurisdiction. No precedent, however, exists for the enforcement of any such law, and if such law could be enforced (a point which we do not undertake to decide) it would not avail to sustain a bill in equity filed in the original case. There must be a direct statute of the

United States in order to bring within the scope of its laws, as administered by the courts of law and equity, obstructions and nuisances in navigable streams within the States."

I have not overlooked the essential difference between this case and the one submitted to me. Notwithstanding the bridge case involved the simple question of obstructing a navigable stream *within a State*, nevertheless the principle that there must be a direct statute of the United States in order to bring within the scope of its laws the acts of those who seek to destroy the navigability of a lake situated as Goose Lake is, is equally applicable.

This principle of law as to jurisdiction does not affect the view of this particular matter above expressed, owing to the distinction between the classes of cases, which I think very clear.

If my theory is correct, then so long as the United States remain proprietary owners of lands bordering on the lake the circuit court may exercise jurisdiction and by decree protect their riparian rights from destruction or diminution, provided the damages equal or exceed the statutory amount. (See subdivisions in second of section 629, Revised Statutes, as amended by the act of March 3, 1875, and the further act of March 3, 1887.) In brief, I think that under the statutes the United States may resort to equity and obtain a remedy to preserve any mere proprietary right from threatened destruction.

In connection with the main inquiry submitted I have examined section 2339, Revised Statutes, thinking perhaps that the California corporation might base its rights upon that section and that the water is to be used "for mining, agriculture, manufacturing, or other purposes. I do not question the validity of this law when applied to proper cases. Congress is authorized to 'regulate' not *destroy* commerce among the States, and, in my judgment, has no authority to pass any law authorizing the destruction, entire or partial, of a highway for interstate commerce for purposes foreign to commerce or post roads or to their regulation." (18 Fed. Rep., 774 *et seq.*)

I would venture further to suggest that the Government reserve from entry or sale some of its lands bordering on Goose Lake so as to preserve its riparian rights therein until it shall please Congress to legislate upon this subject in a general and comprehensive way.

Very respectfully,

LEWIS L. MCARTHUR,
United States Attorney.

The ATTORNEY-GENERAL.

DEPARTMENT OF JUSTICE,
Washington, D. C., June 27, 1888.

SIR: Referring to Department letter of the 26th ultimo, relative to the draining of Goose Lake by a corporation organized in California, I transmit herewith a copy of a letter of the 16th instant from the Secretary of the Interior covering a report from the General Land Office, from which it appears that the Government land bordering on said lake might be injured by the proposed drainage, but the Secretary is of opinion that it is a question of law properly pertaining to this Department whether the parties can be enjoined by the Government from carrying out their purpose.

You will therefore report your views on the question of law for consideration.

Very respectfully,

G. A. JENKS,
Acting Attorney-General.

L. L. MCARTHUR, Esq.,
United States Attorney, Portland, Oregon.

DEPARTMENT OF THE INTERIOR,
Washington, June 16, 1888.

SIR: I transmit herewith a copy of a report of the Commissioner of the General Land Office, upon the communication of C. A. Cogswell of date May 12, 1888, calling attention to the proposed drainage of Goose Lake by a corporation organized in the State of California, which was referred to this Department by your letter of May 26, 1888.

Said report contains all the information possessed by this Department with reference to said subject.

From said report it will be seen that there is still vacant public land bordering on said lake, and therefore the Government, in common with others owning lands

bordering thereon, might be injured by the drainage of it, but the question as to whether said parties can be enjoined from carrying into effect the alleged purpose of draining said lake at the instance of the Government being a question of law properly pertaining to the Department of Justice, I return said communication with the report of the Commissioner of the General Land Office for your consideration and action in the premises.

Very respectfully,

WM. F. VILAS,
Secretary.

Hon. A. H. GARLAND,
Attorney-General.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 26, 1888.

SIR: Your letter of the 23d instant has been received, inclosing one from the Hon. C. A. Cogswell, relative to the drainage of Goose Lake by a corporation organized under the laws of California.

Copies of the correspondence referred to have been forwarded to the United States attorney for Oregon for his investigation and report, and the Secretary of the Interior for his consideration and such suggestions as he may deem best for the public interests.

You shall be advised of whatever further action may be taken by the Department.

Very respectfully,

A. H. GARLAND,
Attorney-General.

Hon. JOHN H. MITCHELL,
United States Senate.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 26, 1888.

SIR: I have the honor to transmit herewith for your consideration, and such suggestions as may be deemed best, a copy of a letter of the 23d instant, with its inclosure from the Hon. J. H. Mitchell, United States Senate, relative to the drainage of Goose Lake by a corporation organized under the laws of California.

Very respectfully,

A. H. GARLAND,
Attorney-General.

The SECRETARY OF THE INTERIOR.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 26, 1888.

SIR: I transmit herewith for your investigation and report, a copy of a letter of the 23d instant, with its inclosure, from the Hon. J. W. Mitchell, United States Senate, relative to the drainage of Goose Lake by a corporation organized under the laws of the State of California.

Respectfully,

A. H. GARLAND,
Attorney-General.

L. L. MCARTHUR, Esq.,
United States Attorney, Portland, Oregon.

UNITED STATES SENATE,
Washington, D. C., May 23, 1888.

SIR: I beg to hand you the inclosed letter from Hon. C. A. Cogswell, Lake View, Oregon, which explains itself.

Should any action be taken by your Department I beg to be advised.

I am, very respectfully,

JOHN H. MITCHELL.

Hon. A. H. GARLAND,
Attorney-General, Department of Justice.

LAKEVIEW, OREGON, *May 12, 1888.*

DEAR SIR: I would call your attention to the fact that a corporation has been organized under the laws of the State of California for the purpose of draining Goose Lake by cutting a canal at the lower end in California and running the water into Pitt River and using the water for irrigating purposes.

The citizens of the Oregon portion of this (Goose Lake) valley are very fearful that the draining of the lake will produce climatic changes that will materially injure the value and productions of this section of the country, and it is certain that it will forever destroy Goose Lake as a navigable highway.

As this body of water lies within two States, that is, Oregon and California, and as it is navigable in both States, and in a short time will be valuable as a means of interstate commerce, is it not the duty of the General Government to protect this water way?

If this is your view of the law can not you call the attention of the Attorney-General to this matter and request him to institute suits to prevent the drainage of this lake?

If any action is taken it should be speedy, as the corporation have commenced work and in a couple of months will tap the lake, and after that the action of the water will soon cut a channel that will entirely drain and destroy one of the finest bodies of fresh water on the Pacific Coast.

I am, sincerely,

C. A. COGSWELL.

Hon. JOHN H. MITCHELL,
United States Senator, Washington, D. C.

